

<p>1 2 -----x 3 In the Matter of the Arbitration 4 -of- 5 SECURITY INSURANCE COMPANY OF HARTFORD Itself 6 and as Successor in Interest to THE FIRE AND 7 CASUALTY INSURANCE COMPANY OF CONNECTICUT and 8 THE CONNECTICUT INDEMNITY COMPANY, 9 10 Claimant, 11 12 -against- 13 COMMERCIAL RISK REINSURANCE COMPANY LIMITED 14 (BERMUDA) and COMMERCIAL RISK RE-INSURANCE 15 COMPANY (VERMONT), 16 17 (Non-DIG Arbitration) Respondents. 18 -----x 19 March 28, 2006 20 10:05 a.m. 21 Stroock &amp; Stroock &amp; Lavan LLP 22 180 Maiden Lane 23 New York, New York 24 25 ORGANIZATIONAL MEETING BEFORE: DAVID A. THIRKILL, Umpire MARTIN D. HABER, ESQ., Arbitrator THEODOR DIELMANN, Arbitrator Reported by: ANDREW WALKER, RPR (1991)</p>	<p>1 2 3 THE UMPIRE: Let's go on the 4 record. 5 Good morning, ladies and 6 gentlemen. This is the organizational 7 meeting of a dispute between Security 8 of Hartford Insurance Company and 9 Commercial Risk Reinsurance Company 10 Limited, and I think we've all agreed to 11 caption this as, in parentheses, 12 "Non-DIG" to distinguish it from another 13 dispute between the parties which have, 14 in effect, the same cast of characters 15 if different underlying contracts. 16 I think everybody has got a copy 17 of an agenda that was circulated and, if 18 so, we could move straight to that 19 agenda and item 1, "Disclosures." 20 The panel, if it's okay with you, 21 would like to use the same disclosures 22 as was disclosed at the previous hearing 23 on the DIG matter. The obvious only 24 update is that whereas before you had 25 not secured an umpire, in this matter</p>
<p>1 2 APPEARANCES: 3 4 STROOCK &amp; STROOCK &amp; LAVAN LLP 5 Attorneys for Claimant 6 180 Maiden Lane 7 New York, New York 10038-4982 8 9 BY: MICHELLE L. JACOBSON, ESQ. 10 ANDREW LEWNER, ESQ. 11 12 D'AMATO &amp; LYNCH 13 Attorneys for Respondents 14 70 Pine Street 15 New York, New York 10270 16 17 BY: JOHN P. HIGGINS, ESQ. 18 19 ALSO PRESENT: 20 21 JAMES F. MEEHAN, ESQ. 22 Vice President and General Counsel 23 Royal &amp; SunAlliance USA 24 25 ANDRE LEFEBVRE Financial Risk Officer Royal &amp; SunAlliance USA JOELLE de LACROIX CRP</p>	<p>1 Proceedings - 3/28/06 2 obviously now you have, and it's me. I 3 have no additional disclosures to that. 4 If none of the other panelists 5 do -- 6 MR. HABER: I have no further 7 disclosures. 8 MR. DIELMANN: No, none either. 9 THE UMPIRE: Would that be 10 acceptable to the parties? 11 MS. JACOBSON: Yes, that's 12 acceptable. 13 MR. HIGGINS: Yes. 14 THE UMPIRE: So I thus assume 15 there's no questions of the panel in 16 relation to those disclosures. And 17 would, therefore, ask you to formally 18 accept the panel as it is. 19 MS. JACOBSON: We accept the panel 20 on behalf of the claimant. 21 MR. HIGGINS: We do on behalf of 22 respondent. 23 THE UMPIRE: May I take this 24 opportunity, I understand that there's 25 been some family situation with Mr. --</p>

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 2 Bob Lewin, and the panel would like to  
 3 pass on condolences to him in that  
 4 regard.  
 5 MS. JACOBSON: I will pass those  
 6 along, thank you.  
 7 THE UMPIRE: I think we had a hold  
 8 harmless at the last hearing.  
 9 Presumably somebody's prepared one on a  
 10 similar basis.  
 11 MS. JACOBSON: We have.  
 12 MR. LEWNER: Yes.  
 13 THE UMPIRE: Go off the record for  
 14 a second.  
 15 (Pause in the proceedings)  
 16 THE UMPIRE: Back on the record.  
 17 Just for the record, during the  
 18 break the parties signed – the parties  
 19 and the panel signed both the hold  
 20 harmless and a confidentiality  
 21 agreement.  
 22 Before we go on to brief  
 23 statements, what we'd like to do is to  
 24 go through this organizational meeting  
 25 and then adjourn that and then stay on

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 2 arbitration, in reality it's really  
 3 three separate programs, NHE, ORS and  
 4 HPP, that are all governed by separate  
 5 reinsurance contracts. Commercial Risk  
 6 has failed to make payments under three  
 7 separate reinsurance agreements which  
 8 covered business written by three  
 9 program managers with three separate  
 10 sets of facts. What's notable, really,  
 11 about Commercial Risk's position  
 12 statement is what it doesn't say.  
 13 Although paying lip service to the  
 14 notion that it's going to satisfy its  
 15 obligations under the reinsurance  
 16 agreements, it hasn't done that.  
 17 Despite the fact that Commercial  
 18 Risk has been in and audited, it does  
 19 not share the audit with the panel or  
 20 with the claimant. What's plain is that  
 21 Commercial Risk really doesn't have a  
 22 position, they only intend to use this  
 23 arbitration proceeding as a means to go  
 24 fish.  
 25 We will show that Commercial Risk,

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 2 the record for some questions in  
 3 relation to the security issue, and then  
 4 we'll go off that record and the panel  
 5 will meet, and, if necessary, discuss  
 6 security related to both matters since  
 7 from a principle viewpoint we believe  
 8 that the issues are the same.  
 9 That's what we'd like to do if  
 10 that's okay with you.  
 11 MS. JACOBSON: That's fine.  
 12 MR. HIGGINS: That's fine with us.  
 13 THE UMPIRE: Thank you.  
 14 So if we move on, obviously – and  
 15 thank you, the panel would like to thank  
 16 the parties for the position statements  
 17 received, I think they were very clear,  
 18 as were the exhibits. If you'd like to  
 19 add anything to it, you should go ahead.  
 20 MS. JACOBSON: Okay.  
 21 At the outset – I would like to  
 22 thank the panel for hearing this matter.  
 23 At the outset, I want to make  
 24 clear that although we've been referring  
 25 to this arbitration as the non-DIG

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 2 contrary to their position statement,  
 3 was very involved in these three  
 4 programs, and that their underwriter  
 5 participated in joint audits with  
 6 Security of Hartford. Commercial Risk  
 7 was in large measure the risk bearer and  
 8 took that role very seriously. If  
 9 anyone is an ostrich--and I've taken  
 10 that from their position  
 11 statement--that's Commercial Risk now  
 12 and not Commercial Risk at the time.  
 13 These reinsurance agreements were all  
 14 terminated or expired by June 30th of  
 15 '02 and if, in fact, there were  
 16 problems, why does it take so long for  
 17 them to complain?  
 18 We've asked for prehearing  
 19 collateral. I don't know if the panel  
 20 would like me to address that now, but  
 21 as set forth in our papers we are  
 22 seeking security in connection with this  
 23 proceeding.  
 24 THE UMPIRE: Unless my  
 25 co-panelists have another decision, if

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2 you're talking in a principle sense,  
3 keep going; if you want to get into  
4 details, why don't you leave that to the  
5 post-organizational meeting discussion I  
6 referred to earlier.

7 MS. JACOBSON: Okay. Well, in  
8 essence, our contention is that under  
9 the reinsurance contracts, each  
10 reinsurance contract, there is a  
11 provision for security that is  
12 unconditional, it's not conditioned on  
13 there not being any disputes. So  
14 irrespective of whether or not we are in  
15 an arbitration proceeding, Commercial  
16 Risk is required to post that as a  
17 contractual matter. We are seeking that  
18 security now, we're calling it  
19 prehearing security but, in essence,  
20 it's a contractual right which is  
21 unconditional, and if the panel would  
22 like, I can set aside the numbers  
23 discussion for later on.

24 THE UMPIRE: Please.

25 MS. JACOBSON: Thank you.

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2 THE UMPIRE: Thank you.

3 MR. HIGGINS: We also would like  
4 to thank the panel for attention.

5 We agree there are three separate  
6 contracts, three separate contractual  
7 agreements, but we take serious issue  
8 with an implication that we're fishing  
9 here. We did take a limited audit, and  
10 that limited audit disclosed several  
11 irregularities, to put it mildly, in the  
12 underwriting. And those, although there  
13 isn't a formal report of this  
14 arbitration, we did share the  
15 conclusions in broad terms. As a matter  
16 of fact, a lot of it has to do with  
17 referrals and that sort of thing, and a  
18 statement was made by RSA that those  
19 referral documents and all the issues  
20 relating to the referral question would  
21 be delivered to us last year, and we're  
22 still waiting for them. So to suggest  
23 that we're fishing is, I think, not  
24 correct, and shouldn't be given any  
25 weight by the panel.

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2 In terms of the contractual right  
3 to security, I think we can get into the  
4 details of it later. The only statement  
5 we made in support of it at this stage  
6 by Security is--I think there are too  
7 many "securitys" here, but by  
8 Security--is the contractual obligation.  
9 They, in fact, made three arguments; I  
10 don't know whether you want me to deal  
11 with those at this stage as a matter of  
12 principle. I'm happy to if that's the  
13 panel's wish.

14 THE UMPIRE: Go ahead.

15 MR. HIGGINS: To begin with,  
16 they've cited Section 13 -- was it?

17 MS. JACOBSON: 1213.

18 MR. HIGGINS: -- 1213 of the  
19 New York Insurance Law. This has never  
20 been used by an arbitration panel. It  
21 is clear as to why it's never been used  
22 by an arbitration panel because it only  
23 applies to court proceedings. All the  
24 cases cited are court proceedings,  
25 there's no case that's been cited where

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 2 it's clear that that section is utterly  
 3 irrelevant to this proceeding.  
 4 THE UMPIRE: Hold a second.  
 5 (Discussion off the record)  
 6 THE UMPIRE: I think it would  
 7 probably be efficient if we ask  
 8 questions as we go along, if that's okay  
 9 with the panel.  
 10 MR. HIGGINS: That's fine.  
 11 MR. HABER: Would you mind looking  
 12 at Exhibit B of Security's reply brief,  
 13 please.  
 14 MS. JACOBSON: It's also in our --  
 15 MR. HIGGINS: The new one?  
 16 MR. LEWNER: Yes.  
 17 MR. HABER: The case is American  
 18 Centennial versus Seguros la Republica.  
 19 MR. HIGGINS: That's it.  
 20 And what's the question?  
 21 MR. HABER: Well, I'm looking --  
 22 your position, if I understand it  
 23 correctly, is 1213 does not apply to  
 24 arbitrations.  
 25 MR. HIGGINS: Right.

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 2 wouldn't alter the fact, but the judge  
 3 here ordered the security. It hadn't  
 4 been, it hadn't been -- the order hadn't  
 5 been issued by an arbitration panel so  
 6 we don't have a situation where the  
 7 arbitration panel ordered it under 1213,  
 8 so that -- well, number one, that issue  
 9 would be dicta, but number two --  
 10 MR. HABER: Yeah?  
 11 MR. HIGGINS: -- number two, this  
 12 is an underlying procedure, proceeding,  
 13 this arbitration. And as I said, there  
 14 are cases where you had a confirmation  
 15 proceeding in court and before the court  
 16 would allow a response to the  
 17 confirmation proceeding, the court  
 18 ordered that this security be put up  
 19 under 1213, and there have been cases  
 20 where there's a motion to compel  
 21 arbitration, there's very few cases, but  
 22 motion to compel arbitration where the  
 23 court ordered the security to be put up  
 24 before it would allow the respondent to  
 25 put in a response or an answer,

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 2 MR. HABER: Second column of the  
 3 first page of that says, and I'm reading  
 4 in the second full paragraph, second to  
 5 the last sentence, "The contention that  
 6 the legislature did not intend 1213 to  
 7 apply to reinsurance must be rejected.  
 8 In addition, the language of the statute  
 9 is clear that it applies broadly to any  
 10 proceeding, including an arbitration  
 11 proceeding. Accordingly, based on our,"  
 12 and then there's another citation to  
 13 1213(c)(1)," "Accordingly, based on our  
 14 review of this issue, we find no error  
 15 in the magistrate judge's recommendation  
 16 and, therefore adopt, that  
 17 recommendation in full."  
 18 Please explain how this case is  
 19 distinguished and supports your position  
 20 that 1213 doesn't apply to arbitration.  
 21 MR. HIGGINS: Well, it does  
 22 broadly, as this says, apply to  
 23 arbitrations in the sense that once it  
 24 gets to court, just the fact that an  
 25 underlying procedure is arbitration

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 2 pleading, which is what this refers to,  
 3 in the court.  
 4 MR. HABER: Okay. Could you now  
 5 go to Exhibit C, which is the next case,  
 6 which is Northwestern National v. Kansa  
 7 and I'm looking at the third page, first  
 8 column under "Request for Bond," and  
 9 this is the bond that Kansa is supposed  
 10 to post to security and the last two  
 11 sentences say, "Accordingly, the parties  
 12 are instructed to meet and attempt to  
 13 resolve the amount of the bond to be  
 14 posted by Kansa. If the parties are  
 15 unable to reach agreement within two  
 16 weeks from the date of this order, the  
 17 arbitration panel will then resolve the  
 18 issue."  
 19 How does that support your  
 20 position?  
 21 MR. HIGGINS: Well, not the issue  
 22 of whether there'd be security, just the  
 23 amount. So the court is ordering the  
 24 security under Section 1213, it isn't  
 25 assigning that job to the panel, which

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 2 is what is being suggested by the  
 3 claimant.  
 4 MR. HABER: Are you --  
 5 MR. HIGGINS: All that the court  
 6 is assigning to the parties for  
 7 agreement or in default to the panel, is  
 8 the amount of the security.  
 9 MR. HABER: I'm trying to  
 10 understand, so your argument is that it  
 11 is only a judge who may order the  
 12 posting of security, not this panel?  
 13 MR. HIGGINS: Yes.  
 14 MR. HABER: And your authority for  
 15 that position -- do you have affirmative  
 16 authority or are you just saying you  
 17 disagree with any reading of the cases  
 18 other than your interpretation?  
 19 MR. HIGGINS: Well, I don't think  
 20 there is a disagreement with my  
 21 interpretation in terms of who ordered  
 22 the security. Now, there are --  
 23 MR. HABER: I'm going to go out --  
 24 your opposing counsel I think is.  
 25 MR. HIGGINS: That there's

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 2 MR. HIGGINS: We don't contest  
 3 that.  
 4 THE UMPIRE: Thank you.  
 5 MR. HIGGINS: There are three  
 6 grounds here, that's one of them.  
 7 The second ground is the ground  
 8 that there's a contractual obligation,  
 9 and that was dealt with briefly by  
 10 Ms. Jacobson. There's a number of  
 11 arguments against that. The primary  
 12 argument is that that's final relief,  
 13 and until we have -- until we have a  
 14 hearing here, the panel shouldn't be in  
 15 the business of enforcing one provision  
 16 of the contract and refusing to enforce  
 17 the other provisions of the contract.  
 18 We say it's equally clear that these  
 19 contracts only cover business which is  
 20 written in accordance with the  
 21 underwriting guidelines.  
 22 Now, we have to prove that and  
 23 we'd like an opportunity to prove that,  
 24 but to say that one provision is clear  
 25 and, you know, object to the other

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 2 security, that there's authority for an  
 3 arbitration panel ordering security?  
 4 MR. HABER: You don't think  
 5 they've taken that position?  
 6 MR. HIGGINS: They have taken that  
 7 position, there's no authority for it.  
 8 And I don't think you can read these  
 9 cases as a matter of fact to interpret  
 10 them that the panel issued the 1213  
 11 order and not a court. In every case,  
 12 the court ordered the 1213.  
 13 MR. HABER: Okay.  
 14 MR. HIGGINS: And there is no  
 15 authority going the other way, simply  
 16 because the statute is clear.  
 17 MR. HABER: Okay.  
 18 THE UMPIRE: Let me see if I can  
 19 clarify that for my own mind.  
 20 It's your position that an  
 21 arbitration panel, per 1213, does not  
 22 have authority?  
 23 MR. HIGGINS: Exactly.  
 24 THE UMPIRE: Not an arbitration  
 25 panel doesn't have authority per se?

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 2 provision is splitting the contract, and  
 3 that's final relief. If we are ordered  
 4 to put up security at the end of the  
 5 case because the panel has determined  
 6 that it's part of the relief that  
 7 security should be granted, then that's  
 8 what we'll deal with at the time and  
 9 that's when we'll put up -- we're happy  
 10 to put up the security at that time. We  
 11 don't think that at this stage we should  
 12 be looking at one aspect of the contract  
 13 and not at the other aspect.  
 14 Secondly, the clause only applies  
 15 to situations where credit for  
 16 reinsurance is a problem. And there are  
 17 a number of reasons why we shouldn't be  
 18 thinking about prehearing security,  
 19 which presumably would be under the  
 20 control of the panel, as solving that  
 21 problem. There's no contractual  
 22 requirement that we put up security that  
 23 is in the possession -- or under the  
 24 control of the panel, for the simple  
 25 reason that it wouldn't solve the credit

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 2 for reinsurance problem because if it's  
 3 not unconditional, then the state won't  
 4 accept it, it's got to be utterly  
 5 unconditional. So if the panel decides  
 6 that security is there and it can only  
 7 be paid over if the judgment provides  
 8 for that, which is the standard forms  
 9 for security under the ARIAS forms, then  
 10 that does Security no good.

11 Secondly, on that point, we don't  
 12 believe that there is an obligation  
 13 under the contract to provide security  
 14 for the amount that's being sought.  
 15 Number one, we question the number,  
 16 because we question our obligation in  
 17 light of the defenses that we have  
 18 raised.

19 Secondly, we question the number  
 20 based on the security that -- based on  
 21 the amount of letters of credit that  
 22 Security is showing on its Schedule F.  
 23 There is no penalty for this contract,  
 24 so if there's no penalty, then there's  
 25 no right to claim a right under the

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 2 overpayment of premium, it's just not  
 3 covered by the treaty. And I think if  
 4 you push it all out and give us a credit  
 5 for the \$4 million letter of credit, I'm  
 6 not sure that we owe them anything, even  
 7 under their interpretation.

8 The last argument that's made, and  
 9 we think it's libelous, is that  
 10 Commercial Risk doesn't have the  
 11 wherewithal to satisfy a \$6 million  
 12 letter of credit. We think it's just  
 13 outrageous for a company like RSA to  
 14 make against Commercial Risk and  
 15 ultimately SCOR, to question the ability  
 16 of SCOR to satisfy a judgment. We trust  
 17 that that's an argument that's -- an  
 18 advocate, a lawyer would put forward and  
 19 not RSA, but it's kind of a sad  
 20 commentary when that sort of  
 21 bloody-minded attitude is put forth in  
 22 an arbitration. We have this much  
 23 security in these two big companies  
 24 going at each other for a paltry  
 25 \$6 million, it's just, we think,

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 2 contract for a letter of credit which  
 3 would cure the penalty. The fact that a  
 4 parent put up letters of credit we would  
 5 suggest is not a proper way to secure  
 6 under Schedule F. So the fact that they  
 7 have chosen to do this, and it cures  
 8 their problem, is not something that we  
 9 brought along. The problem is cured?  
 10 So be it.

11 The last item -- well, and also,  
 12 sorry, just to go back to that item, if  
 13 you look at the amounts claimed on the  
 14 schedule, number one, they keep  
 15 changing, and, number two, the schedule  
 16 is not understandable in terms of what  
 17 the security should be. It deals with  
 18 various items, premium items, claim  
 19 items, and, you know, there are negative  
 20 items on the funds held, there are  
 21 positive items on the amount of the  
 22 losses, Schedule F only deals with  
 23 losses, so we shouldn't -- you know, we  
 24 shouldn't be obligated to secure things  
 25 like return premium or, as they put it,

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 2 outrageous.

3 Question was made as to whether a  
 4 an award would be enforceable in France.  
 5 That's unsupported by the claimant under  
 6 French law. I'm not an expert on French  
 7 law but I do know that France is a  
 8 signatory of the U.N. Convention for the  
 9 Enforcement of Foreign Arbitration  
 10 Awards, so, number one, there wouldn't  
 11 be any problem going to France and  
 12 getting it upheld and getting an order  
 13 confirming the award. As it wouldn't be  
 14 in this country if we had an arbitration  
 15 award in France. There's an assumption  
 16 that civilized countries should  
 17 recognize their judgments and also  
 18 should recognize their arbitration  
 19 awards. So we think that that is also a  
 20 fairly outrageous statement to make on  
 21 that issue.

22 And I think I had another point.

23 Also, a point was made that  
 24 there's a case that's been filed in, I  
 25 think Supreme Court New York, for an



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 2 additional 55 million.  
 3 MR. LEWNER: 49.  
 4 MS. JACOBSON: 48.  
 5 MR. HIGGINS: 48, sorry.  
 6 That's -- you know, I think that's  
 7 utterly improper for anyone to suggest  
 8 that that has any relevance here.  
 9 Number one, it's not SCOR France, the  
 10 parent company, it's SCOR U.S.  
 11 Secondly, I think what's being  
 12 asked is for the panel to not only judge  
 13 this case but to judge that case as to  
 14 whether there's any merit to that claim  
 15 either. We don't know what it's about.  
 16 I mean they claim they stopped paying  
 17 losses but, you know, who knows what  
 18 that dispute is about. It's in court,  
 19 it's not an arbitration, and the panel  
 20 here really has no ability to analyze  
 21 it, to figure out whether it has any  
 22 application here or whether it affects  
 23 the ability of the parent company or  
 24 could affect the ability of the parent  
 25 company to satisfy this judgment which

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 2 about security because we are going to  
 3 talk about security relative to both  
 4 contracts.  
 5 MS. JACOBSON: Okay, well, Mr. --  
 6 THE UMPIRE: I don't think that's  
 7 too much of a problem at the moment but  
 8 please go ahead.  
 9 MS. JACOBSON: Okay.  
 10 First of all, with respect to  
 11 Mr. Higgins' attempt to parse the cases  
 12 with respect to Section 1213, that it  
 13 was ordered by the court and not the  
 14 arbitration panel, I thoroughly disagree  
 15 with that, we've only cited two cases,  
 16 there are more cases.  
 17 If you turn to the actual statute  
 18 that we've appended to our reply brief  
 19 with respect to the DIG motion, you will  
 20 see that, we turn to Exhibit A, page 16  
 21 of 19, see under "Bond or Deposit" in  
 22 general there is a series of cases which  
 23 deal with Section 1213, the first of  
 24 which is dealing with an arbitration  
 25 panel's interim order for prejudgment

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 2 in this case is going to be, if they get  
 3 everything they want, \$6 million, maybe  
 4 plus some interest. So that's the  
 5 arguments we have on the security issue.  
 6 THE UMPIRE: Thanks.  
 7 Any more questions of John  
 8 before -- Michelle?  
 9 MS. JACOBSON: I believe that  
 10 Mr. Higgins has actually combined the  
 11 two security motions because a lot of  
 12 the references were actually to DIG and  
 13 I believe that we were here to discuss  
 14 the non-DIG programs, NHE, ORS and HPP.  
 15 However --  
 16 MR. HIGGINS: I was mistaken, I  
 17 thought we were discussing -- we were  
 18 still in the organizational meeting when  
 19 we were discussing security.  
 20 THE UMPIRE: Yes, we're still in  
 21 the organizational meeting.  
 22 MS. JACOBSON: Right.  
 23 THE UMPIRE: I understand that  
 24 there are perhaps some grayish and  
 25 blurry lines here when we're talking

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 2 security.  
 3 THE UMPIRE: Hold on, just a  
 4 second.  
 5 MS. JACOBSON: That's the thin  
 6 one.  
 7 THE UMPIRE: It's actually page 15  
 8 but at the top --  
 9 MS. JACOBSON: Page 15 but it does  
 10 say page 16 of 19 at the top.  
 11 THE UMPIRE: Okay.  
 12 MS. JACOBSON: If you look to the  
 13 very first entry, there it is dealing  
 14 with an arbitration panel's interim  
 15 order, it was obviously being reviewed  
 16 by the court on prejudgment security.  
 17 So I think it is clear that 1213  
 18 does, in fact, apply to proceedings,  
 19 it's not limited to litigations, but in  
 20 any event, if I heard Mr. Higgins  
 21 correctly, he does not debate that the  
 22 panel has the inherent authority to  
 23 issue such awards, even if one were to  
 24 credit his argument under Section 1213.  
 25 Mr. Higgins' statement -- I'd like

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 2 to respond to Mr. Higgins' statements  
 3 with respect to the contractual  
 4 provision. He's indicated that, in  
 5 essence, we're seeking final relief. I  
 6 mean that's not the case at all. In  
 7 both of our arbitration proceedings,  
 8 we're -- certainly we were entitled  
 9 under these provisions to completely  
 10 draw down on whatever we had, and we  
 11 haven't done so. We believe, however,  
 12 that these amounts should be set aside  
 13 in escrow, it's not akin to final  
 14 relief, and we would -- we assert that  
 15 the contract is clear that it does not  
 16 limit itself to matters not in dispute;  
 17 therefore, to the extent that we have  
 18 reserved and we have paid losses, and  
 19 that there is IBNR that we have set  
 20 aside, then they should post those sums  
 21 in an escrow amount per the terms of the  
 22 contract.

23 Mr. Higgins has discussed the  
 24 Schedule F. I think, frankly, that it's  
 25 shocking that Commercial Risk did not

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 2 inform the panel that, indeed, it had  
 3 not posted the \$29 million which appears  
 4 under LOCs. They know they haven't  
 5 posted that amount. In fact, there is  
 6 10.3 million that was as a result of  
 7 Royal's parent's LOC and to the extent  
 8 that Commercial Risk has contended that  
 9 in some regard that's improper, the  
 10 Delaware Insurance Department, which is  
 11 Royal Indemnity's domicile, has blessed  
 12 this very use of the parental LOC. It's  
 13 contained in the notes of the annual  
 14 statement of Royal Indemnity. So there  
 15 is nothing wrong with it.

16 However, they should not be  
 17 entitled to take credit for the parental  
 18 LOC that's out there. Their statement  
 19 that we solved the problem so that,  
 20 therefore, they don't have to abide  
 21 under their contractual obligations is  
 22 frankly -- I find it absurd.

23 Now, they express shock and dismay  
 24 over the fact that we said that they may  
 25 not have the wherewithal to satisfy any

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 2 award here, and they said that they feel  
 3 it libelous. Well, to the extent that  
 4 we know that Commercial Risk has frankly  
 5 ceased paying on many millions of  
 6 dollars worth of obligations, we have a  
 7 problem with that. We don't think it's  
 8 libelous to assert that maybe that they  
 9 won't pay; their financial statements  
 10 show otherwise. They are relying  
 11 wholeheartedly on this guarantee that  
 12 has been posted by SCOR? Well, you  
 13 know, if you take a look at that  
 14 guarantee, it's addressed to whom it may  
 15 concern; that's not a contract that  
 16 anyone can rely on, to whom it may  
 17 concern.

18 And I would also indicate that if  
 19 you look at that SCOR guarantee, one of  
 20 them is dated July of '99. That's the  
 21 date of the first DIG contract that we  
 22 have. That parental guarantee is not  
 23 slapped on to the back of the  
 24 reinsurance contract, it is not our --  
 25 our reinsurance contract is with

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 2 Commercial Risk, it's signed by  
 3 Commercial Risk and it's Commercial Risk  
 4 that we should look to to enforce any  
 5 obligations under the reinsurance  
 6 contract.

7 We, with all due respect, should  
 8 not have to go off to France to litigate  
 9 against the parent on a guarantee which  
 10 is certainly -- I'm not even sure if  
 11 it's a legal obligation under U.S. law  
 12 or French law.

13 And, certainly, I don't think that  
 14 Security Insurance Company of Hartford  
 15 should have to engage in ancillary  
 16 litigation in France to enforce  
 17 something here and that certainly  
 18 collateral should be posted.

19 MR. DIELMANN: I have a question.  
 20 Mr. Higgins said -- stated that there  
 21 are -- France is a signatory of the U.N.  
 22 agreement for enforcing arbitration  
 23 awards. Is this, indeed, correct, that  
 24 you have to go to France if the panel,  
 25 you know, gives you relief or can that



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 2 award be enforced in this country?  
 3 MS. JACOBSON: Well, SCOR, the  
 4 parent, is not a party to this  
 5 arbitration. So if this panel -- this  
 6 panel would have to somehow suck SCOR,  
 7 the parent, into this arbitration on an  
 8 alter ego theory.  
 9 MR. DIELMANN: But is that not  
 10 then a formality to have it confirmed in  
 11 France? I mean what you are implying it  
 12 seems to me that you basically have to  
 13 struggle to get it enforced in France  
 14 but if SCOR is a signatory, then surely  
 15 the subsidiary -- you would have to just  
 16 to get it confirmed or do I understand  
 17 this incorrectly?  
 18 MS. JACOBSON: No, I believe, with  
 19 all due respect, I think you have it  
 20 incorrectly. I mean here SCOR is not a  
 21 party to this arbitration; they would  
 22 not -- there would not be an award  
 23 entered against SCOR in this arbitration  
 24 unless they're brought in as a party.  
 25 Therefore, there would be no award to

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 2 enforce here or overseas against SCOR.  
 3 We would have to have an award against  
 4 Commercial Risk. If Commercial Risk  
 5 wouldn't pay, then we would be stuck  
 6 with that parental guarantee and have to  
 7 chase SCOR somewhere, either by  
 8 commencing arbitration against SCOR  
 9 somewhere or by litigating against SCOR  
 10 somewhere. That's the fear.  
 11 MR. HABER: Theo, isn't there a  
 12 simple solution. If SCOR voluntarily  
 13 wishes to submit to the jurisdiction of  
 14 this arbitration panel and be bound by  
 15 U.S. law and be subject to any judgment,  
 16 wouldn't that solve the problem?  
 17 MR. HIGGINS: That's something  
 18 that may well happen but I don't have  
 19 the authority, sitting here, to respond  
 20 to that, but I'm certainly willing to  
 21 respond to it in the next day or so.  
 22 THE UMPIRE: Let me make sure I  
 23 understand this, maybe I can --  
 24 MR. HIGGINS: I can assure you  
 25 that we didn't put that guarantee out as

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 2 something which is illusory.  
 3 MR. HABER: Well, not --  
 4 MR. HIGGINS: To whom it may  
 5 concern is the world. It was sent to  
 6 RSA, it was sent to all the cedents.  
 7 MS. JACOBSON: With all due  
 8 respect, no one in our organization  
 9 recalls having been brought -- provided  
 10 with that.  
 11 THE UMPIRE: I tell you what,  
 12 let's move on, I'm happy with  
 13 understanding where I think we are.  
 14 MR. DIELMANN: I haven't really  
 15 understood what your suggestion, Marty,  
 16 was.  
 17 MR. HABER: Well, my suggestion is  
 18 this, under American laws with regard to  
 19 personal jurisdiction, because SCOR, the  
 20 parent, is not a party here, they are  
 21 not bound by anything legal.  
 22 MR. DIELMANN: Okay.  
 23 MR. HABER: They have signed a  
 24 judgment, they have signed an  
 25 arbitration treaty, if you will, that

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 2 says in the event they lose an  
 3 arbitration in the United States and a  
 4 judgment is against the parent --  
 5 MR. DIELMANN: Right.  
 6 MR. HABER: -- that judgment may  
 7 be enforced in France, not a judgment  
 8 against their subsidiary.  
 9 MR. DIELMANN: Right.  
 10 MR. HABER: So your question, in  
 11 order to respond to your question  
 12 completely, they would have to be  
 13 subject to the jurisdiction of this  
 14 panel and they are not.  
 15 MR. DIELMANN: Okay.  
 16 MR. HABER: I mean no one here is  
 17 claiming that SCOR, the parent, is part  
 18 of this case.  
 19 MR. HIGGINS: No, we're not, but  
 20 it's certainly not clear that anyone  
 21 would have to go to France. SCOR's  
 22 doing business everywhere including  
 23 here.  
 24 THE UMPIRE: Let me say something  
 25 here for a second. As far as I

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 2 understand it from following  
 3 Mr. Dielmann's question--I'll leave  
 4 Mr. Haber's question out of it for the  
 5 moment--in the event that this panel  
 6 found in favor of Security of Hartford,  
 7 that would be against Commercial Risk's  
 8 both Bermuda and Vermont --  
 9 MS. JACOBSON: That's right.  
 10 THE UMPIRE: -- where relevant.  
 11 If those companies -- and if there  
 12 were no security, with a small "S,"  
 13 posted, Security of Hartford would look  
 14 to Commercial Risk for satisfaction of  
 15 that award. In the event that  
 16 Commercial Risk failed to satisfy the  
 17 award, for whatever reason, it's  
 18 possible that Security could look to the  
 19 guarantee from SCOR as relief. In order  
 20 to satisfy that, it would need to write  
 21 to SCOR and say kindly pay us X amount  
 22 of dollars. If SCOR said, yes, end of  
 23 problem; if SCOR said no, however, then  
 24 I would imagine that Security of  
 25 Hartford would need to file litigation

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 2 won't be enough assets. You have to get  
 3 into the reserving of the company.  
 4 THE UMPIRE: In the event that  
 5 Commercial Risk paid the award that the  
 6 panel had given, it will be end of  
 7 story.  
 8 MR. HIGGINS: Yes.  
 9 THE UMPIRE: In the event that it  
 10 did not pay, for whatever reason,  
 11 whether it could, didn't want to or  
 12 couldn't because it was bust, makes no  
 13 difference.  
 14 MR. HIGGINS: I'm sorry, it does  
 15 make a difference on the first thing  
 16 that you said, because you can enforce  
 17 it against the company if they have the  
 18 funds. It's entitled to be entered in a  
 19 court and then enforced, entered as a  
 20 judgment and then enforced if they don't  
 21 want to pay. Now, if they're belly up,  
 22 then that would trigger what you're --  
 23 THE UMPIRE: Well, couldn't  
 24 Security pursue both angles --  
 25 MR. HIGGINS: Sure.

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 2 against SCOR, presumably in France,  
 3 under the terms of that guarantee.  
 4 Whether in France or the U.S., it would  
 5 need to file litigation, I'm just  
 6 assuming, but what I'm saying, it in  
 7 France; I would need to fight that  
 8 litigation in order to secure the award.  
 9 Is that a clear understanding of  
 10 that issue?  
 11 MS. JACOBSON: That is correct.  
 12 THE UMPIRE: As far as Mr. Haber's  
 13 question --  
 14 MR. HIGGINS: Well, could I  
 15 just --  
 16 THE UMPIRE: Go ahead.  
 17 MR. HIGGINS: One caveat to what  
 18 you just said. In the first instance,  
 19 it would be up to Security -- or, I'm  
 20 sorry, Commercial Risk to determine  
 21 whether they even satisfied the  
 22 judgment. I mean this is something that  
 23 only applies if there isn't enough  
 24 assets, and there's been no proof that  
 25 there isn't enough assets or that there

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 2 THE UMPIRE: -- at the point in  
 3 time, i.e., pursue Commercial Risk,  
 4 let's assume that it's not in litigation  
 5 or even if it is, it's against the  
 6 receiver, and under the parental  
 7 guarantee, the guarantee I don't think  
 8 mentions the liquidation scenario, it's  
 9 just a blanket guarantee, what it's  
 10 worth is something else, I don't want to  
 11 get into that issue, but as a matter of  
 12 law, I think Security could pursue both  
 13 if they so choose?  
 14 MR. HIGGINS: If they believe that  
 15 it's clear that Commercial Risk can't  
 16 satisfy it, then they would be -- they  
 17 would be free to, you know, to litigate  
 18 under the guarantee and then pursue  
 19 rights against Security presumably at  
 20 the same time by filing a liquidation  
 21 proceeding or however. But the  
 22 guarantee is a standby, so, first,  
 23 they'd have to pursue Security, which is  
 24 normal, and if Security has sufficient  
 25 funds --

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 2 THE UMPIRE: You mean Commercial  
 3 Risk?  
 4 MR. HIGGINS: I'm sorry, they have  
 5 to pursue Commercial Risk, and if  
 6 Commercial Risk has sufficient funds,  
 7 then they'd be obligated to pay them.  
 8 THE UMPIRE: Thank you.  
 9 As far as Mr. Haber's question is  
 10 concerned, I would prefer that we didn't  
 11 raise the issue of bringing in any  
 12 parties yet until we've gone down  
 13 through stage one. I think that's a  
 14 little premature and I'd like to have  
 15 panel discussion on that first which we  
 16 could -- I think that's --  
 17 MR. HABER: That's perfectly fine  
 18 but I think when we deal with the  
 19 guarantee, and we're assuming facts not  
 20 in evidence, because it's not clear  
 21 under American law that this is a valid  
 22 guarantee, it might be under French law,  
 23 but we do not have an opinion of French  
 24 counsel that this is any sort of  
 25 enforceable guarantee because the first

1 Proceedings - 3/28/06  
 2 guarantee is questionable. It may be  
 3 perfectly valid under French law, I'm  
 4 not suggesting it's not, but there's  
 5 clearly no proof before the panel that  
 6 it is.  
 7 MR. HIGGINS: Well, that's just  
 8 one of them. The other one names both  
 9 companies.  
 10 MR. DIELMANN: May I just, you  
 11 know, just taking on what Mr. Haber  
 12 said, I mean, well, where is the  
 13 problem -- to clarify this, even to take  
 14 out the remotest possibility that SCOR  
 15 doesn't stand behind their subsidiary,  
 16 is that, you know, that there is a, a  
 17 specific guarantee, referring to the two  
 18 treaties and, if need be, to this  
 19 particular or the two arbitrations that  
 20 are currently pending, I mean I do not  
 21 know whether that is too specific but  
 22 surely I would say it would take away  
 23 even the doubts that obviously in the  
 24 claimant's mind that there may be a risk  
 25 that SCOR or Commercial Risk will

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 2 sentence says that "SCOR guarantees that  
 3 Commercial Risk Reinsurance Company,"  
 4 without determining which company,  
 5 "shall perform its claims obligations  
 6 when due." If I understand this case,  
 7 there are two Commercial Risk  
 8 reinsurance companies, correct?  
 9 MR. HIGGINS: Yes.  
 10 MR. HABER: Which one does this  
 11 guarantee apply to?  
 12 MR. HIGGINS: Both of them.  
 13 MR. HABER: It doesn't say that,  
 14 they're two separate legal entities, you  
 15 have not specifically identified -- I  
 16 don't mean you personally, John, I don't  
 17 mean it that way, but SCOR has not  
 18 specifically identified the party whose  
 19 obligations it is guaranteeing. In  
 20 America, under the rules of strictissimi  
 21 juris that voids this to begin with  
 22 because you don't have a party whose  
 23 actual performance is guaranteed without  
 24 having the party completely identified  
 25 and here the party isn't. I think the

1 Proceedings - 3/28/06  
 2 talk -- walk away from any award being  
 3 given by the panel?  
 4 MR. HIGGINS: That is one thing I  
 5 indicated earlier we'd discuss -- what  
 6 you're suggesting is make it specific to  
 7 these contracts --  
 8 MR. DIELMANN: Yeah.  
 9 MR. HIGGINS: -- and have SCOR,  
 10 the parent --  
 11 MR. DIELMANN: Right.  
 12 MR. HIGGINS: -- state that the  
 13 guarantee covers that specifically.  
 14 MR. DIELMANN: Exactly.  
 15 MR. HABER: But there's something  
 16 else, the language in the guarantee says  
 17 that there's a guarantee that they shall  
 18 perform its payment obligations when  
 19 due. This is a judgment in an  
 20 arbitration we're looking to be  
 21 guaranteed, not the performance of a  
 22 claims obligation when due, because in  
 23 theory, and only in theory, if this  
 24 panel ruled in favor of Security of  
 25 Hartford, we would be ruling that a

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1 Proceedings - 3/28/06  
2 claims obligation -- a claims demand  
3 made X months ago or X years ago,  
4 whenever it was made, was due when made  
5 and wasn't paid.

6 This guarantee is unclear in a  
7 literal sense as to all of Commercial  
8 Risk's obligations. It's only talking  
9 about claims obligations when due. It  
10 could mean there's judgment--I'm not  
11 suggesting it doesn't--but it's -- at  
12 this point in time the language is so  
13 unclear as to require a court's  
14 interpretation. Not the kind of thing  
15 you want to bank on to enforce.

16 MR. HIGGINS: Well, I mean the  
17 suggestion is that we clarify that to --

18 MR. HABER: A brand --

19 MR. HIGGINS: -- to alleviate  
20 those concerns.

21 But, secondly, when you're dealing  
22 with guarantees, before you can pursue  
23 the parent, you have to enforce the  
24 obligation, to the extent you can,  
25 against the guaranteeing party.

1 Proceedings - 3/28/06  
2 document that says, "Without offset  
3 defense or counterclaim, we guarantee  
4 the full payment and performance of all  
5 debts owed under the two contracts."  
6 I'm not saying you agree to that  
7 language, I'm not suggesting that; all  
8 I'm saying is you could draft a document  
9 that was a lot tighter.

10 MR. HIGGINS: Yes, and that's what  
11 I'm going to discuss with the client.

12 MS. JACOBSON: And I have a  
13 comment to that.

14 We entered into these contracts  
15 with Commercial Risk. That is our  
16 contracting party. We are entitled to  
17 look to Commercial Risk, we're not -- we  
18 don't have to look to anyone else,  
19 because that's not -- no one else signed  
20 that contract; Commercial Risk signed  
21 that contract, Commercial Risk Vermont  
22 and Commercial Risk Bermuda, those are  
23 the folks that we are pursuing in this  
24 arbitration. Frankly, these are the  
25 only folks that we have a right to

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2 MR. HABER: It depends on the  
3 terms of the guarantee. Some are  
4 guarantees of payment, some are  
5 guarantees of performance. It depends  
6 on the guarantee you enter into and what  
7 the consideration is for the guarantee.  
8 It's a little difficult on the July 1  
9 '99 guarantee to understand how that was  
10 consideration for the DIG contract since  
11 it was the same date.

12 The March 9, 2001 guarantee, at  
13 least I don't think the panel has seen  
14 any evidence as to what the genesis was  
15 for that document and what the  
16 consideration is.

17 I'm just saying there are a lot of  
18 open questions and as we all well know,  
19 if you give a lawyer a chance, they can  
20 make a thousand questions out of a  
21 one-question issue. And there are  
22 really a lot of questions here that are  
23 unanswered and I don't think the  
24 guarantee says precise -- and clearly,  
25 you could clarify it by SCOR issuing a

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2 pursue in this arbitration and we are  
3 entitled to security from them. I don't  
4 want other guarantees or that we may  
5 pay, you know, the parent stands behind  
6 us, I don't think that that does the  
7 trick. That's not who we contracted  
8 with.

9 THE UMPIRE: I think it's  
10 probably -- now is probably a good time  
11 to cut off this particular line of  
12 discussion --

13 MS. JACOBSON: Yeah.

14 THE UMPIRE: -- (a) because I  
15 think we'll start going round again, and  
16 (b) I think from a procedural viewpoint  
17 what we discussed earlier on is the  
18 panel will discuss the issue. It may or  
19 may not become relevant.

20 MS. JACOBSON: Okay.

21 THE UMPIRE: If it does become  
22 relevant, we can revisit it and either  
23 make an order or ask the parties to  
24 comment some more but I think we've  
25 probably added sufficiently enough from

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 2 the principle viewpoint other than my  
 3 co-panelist who obviously doesn't agree  
 4 with me.  
 5 MR. DIELMANN: No, I do agree with  
 6 you.  
 7 THE UMPIRE: Good, let's move on.  
 8 MR. DIELMANN: No, again, I just  
 9 have a very specific question. Is that  
 10 correct or incorrect that, you know,  
 11 Commercial Risk Vermont can -- does have  
 12 under Article -- under the security  
 13 clause you can take credit or not, and  
 14 my question is, you know, does the  
 15 contractual obligation in respect of the  
 16 security requirement, does that also  
 17 refer to Commercial Risk Vermont or not?  
 18 Because I think they only have  
 19 to -- have to -- they only, you know,  
 20 have to oblige if you can -- if, you  
 21 know, Security of Hartford can take  
 22 credit, my question is I'm not clear on  
 23 this point whether that's correct or  
 24 not.  
 25 MS. JACOBSON: I believe that

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 2 MR. DIELMANN: Okay, fine.  
 3 THE UMPIRE: Maybe if we get back  
 4 to the organizational meeting here for a  
 5 moment at least.  
 6 I was incorrect at the beginning  
 7 here, I moved too quickly, I should have  
 8 asked everybody in the room to identify  
 9 themselves, so as a break now it might  
 10 be a good idea to do that.  
 11 I'll start here and then we'll  
 12 move round to the left.  
 13 Obviously, David Thirkill, umpire.  
 14 MR. HABER: Martin Haber,  
 15 party-appointed arbitrator for Security  
 16 of Hartford.  
 17 MR. MEEHAN: James Meehan, I'm  
 18 general counsel for Royal & SunAlliance  
 19 USA and its affiliated insurance  
 20 companies.  
 21 MR. LEFEBVRE: Andre Lefebvre,  
 22 financial risk officer for Royal &  
 23 SunAlliance USA.  
 24 MR. LEWNER: Andrew Lewner, from  
 25 Stroock & Stroock & Lavan, for claimant.

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 2 Commercial Risk Vermont is an admitted  
 3 company.  
 4 MR. DIELMANN: Okay.  
 5 MS. JACOBSON: Authorized,  
 6 authorized, I'm sorry.  
 7 MR. DIELMANN: So as far as if  
 8 there's a security obligation under the  
 9 Article 14, as far as DIG is concerned  
 10 and other articles of a similar nature  
 11 is concerned, they wouldn't have to post  
 12 letters of credit; is that correct?  
 13 MS. JACOBSON: That would be  
 14 correct under the security provisions in  
 15 the contracts, apart from common law and  
 16 statute -- that's correct.  
 17 MR. DIELMANN: And I have another  
 18 question that refers to the net funds  
 19 held.  
 20 Net funds held --  
 21 THE UMPIRE: Theo, can we leave  
 22 that, I was going to ask you your first  
 23 question, you've asked it, but I want to  
 24 get into those details when we get into  
 25 the security discussion.

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 2 MS. JACOBSON: I'm Michelle  
 3 Jacobson, from Stroock & Stroock &  
 4 Lavan, for the claimant.  
 5 MR. HIGGINS: John Higgins,  
 6 D'Amato & Lynch, for the respondent.  
 7 MS. de LACROIX: Joelle  
 8 de Lacroix, CRP.  
 9 MR. DIELMANN: Theo Dielmann,  
 10 party-appointed arbitrator for  
 11 Commercial Risk Vermont and Bermuda.  
 12 THE UMPIRE: Thank you.  
 13 As far as prehearing motions are  
 14 concerned, obviously we have the motion  
 15 for security. Are there any other  
 16 prehearing motions that anybody wants to  
 17 raise at this juncture?  
 18 MR. HIGGINS: Which one are we on?  
 19 THE UMPIRE: We're on the  
 20 organizational meeting?  
 21 MR. HIGGINS: Non-DIG.  
 22 THE UMPIRE: Non-DIG.  
 23 MR. HIGGINS: I think we should  
 24 discuss the consolidation issue. Should  
 25 I deal with that?

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 2 THE UMPIRE: Please.  
 3 MR. HIGGINS: We believe that  
 4 consolidation -- not consolidation in a  
 5 literal sense because we don't have or  
 6 the panel doesn't have the authority  
 7 under New York or Connecticut law to  
 8 order parties to consolidate different  
 9 contracts, so we're not asking for  
 10 consolidation in a literal sense. What  
 11 we're asking is for the panel to order  
 12 that the discovery or disclosure in the  
 13 hearings be held at the same time. I've  
 14 seen that in many cases but -- and  
 15 that's what we're suggesting.  
 16 Now, the objection to that, as far  
 17 as we know, from Security is that we're  
 18 on a very tight schedule in the DIG  
 19 arbitration and it will interfere with  
 20 the ability to complete the schedule and  
 21 it will cause problems timewise for us  
 22 to do that. And I think that if that's  
 23 the case, if that's -- if there's merit  
 24 to that argument, then we would be  
 25 willing to yield on that point so long

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 2 There are such disparate facts  
 3 with respect to each of those programs.  
 4 In one we have a set of three disparate  
 5 facts and DIG has its own set of facts.  
 6 We don't believe that there is that much  
 7 of a substantial overlap. I believe the  
 8 contention is violation of underwriting  
 9 guidelines. The guidelines are  
 10 different in all of the arbitrations.  
 11 If what Mr. Higgins is suggesting  
 12 is to have the DIG arbitration in  
 13 December, as scheduled, and then have a  
 14 later date for the non-DIG, keeping them  
 15 separate, that's fine with us, and we  
 16 would propose an end-of-January hearing  
 17 date if that's acceptable to the panel,  
 18 just splitting them up, keeping them  
 19 separate.  
 20 THE UMPIRE: Okay, let me make a  
 21 couple of points. The panel has already  
 22 chatted datewise at least, and while I  
 23 don't have the specific dates -- are you  
 24 okay?  
 25 MS. JACOBSON: Yeah.

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 2 as we don't end up doing the same thing,  
 3 which is pushing this arbitration, the  
 4 non-DIG arbitration, along at the same  
 5 time as the other and, you know,  
 6 creating the same problem that's being  
 7 objected to.  
 8 So what we would suggest, if the  
 9 panel wants to entertain it, is that we  
 10 have -- that we put this one off and  
 11 have it done after the DIG arbitration.  
 12 And that's perfectly acceptable to us.  
 13 MS. JACOBSON: Okay. Well, we,  
 14 despite what Mr. Higgins is saying that  
 15 he's not seeking consolidation, I think,  
 16 in fact, it would be a de facto  
 17 consolidation, which is not required  
 18 either contractually, you know, in any  
 19 of the agreements, and we don't agree to  
 20 it and I think that's been made clear.  
 21 We agree to consolidate NHE, ORS  
 22 and HPP--those were actually three  
 23 separate arbitrations--we agreed to  
 24 consolidate them into one, having --  
 25 leaving us with two arbitrations.

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 2 THE UMPIRE: -- while I don't have  
 3 the specific dates, and we can come to  
 4 those in a second, the first date we  
 5 could offer you would be March anyway,  
 6 and, in effect, since we had already  
 7 reserved the whole -- the whole week in  
 8 December, I don't remember the exact  
 9 dates, but we reserved the whole week  
 10 and I think the impression that we  
 11 gained when we discussed this is we'd  
 12 need all of that time for the DIG  
 13 arbitration.  
 14 MS. JACOBSON: That's right.  
 15 THE UMPIRE: I mean just as a  
 16 matter of fact we want to be able to  
 17 go --  
 18 MR. HABER: December 11th.  
 19 THE UMPIRE: December 11th, thank  
 20 you, Marty.  
 21 We wouldn't be able to go until  
 22 March anyway.  
 23 Talking a little more generally,  
 24 and again I welcome any input from my  
 25 co-panelists here, since the panel has



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 2 not heard from either of you relative to  
 3 discovery issues in relation to the DIG  
 4 contract, we assume one of two things,  
 5 either you're getting along famously or  
 6 you haven't chatted at all but in either  
 7 case, obviously there's no issues yet  
 8 before us on that. It would seem to me,  
 9 as a matter of logic, that if there's  
 10 auditors going in, just from an  
 11 efficiency viewpoint, one would imagine  
 12 that it would make sense for them to  
 13 sort of look at the two or three if that  
 14 was feasible but, again, if it is a  
 15 problem to either of you, please go  
 16 ahead and organize it as you think best  
 17 and come to us with any issues as they  
 18 arise.  
 19 As far as dates are concerned --  
 20 what was that date again, Marty?  
 21 MR. HABER: March 26th is my  
 22 earlier --  
 23 THE UMPIRE: Okay, that's good.  
 24 I'm free -- are you free?  
 25 MR. DIELMANN: Yes.

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 2 be wrong because I have Easter Sunday  
 3 being on March 27th in 2007, which it  
 4 certainly isn't the case.  
 5 MR. HABER: That's a Monday.  
 6 THE UMPIRE: Let's put it this  
 7 way, let's reserve that week.  
 8 MS. JACOBSON: Yes.  
 9 THE UMPIRE: If it so transpires  
 10 there's a holiday at the end of it and  
 11 we need to go over to the following week  
 12 and come back, we'll do that but I think  
 13 that's important that we at least get it  
 14 on the calendar.  
 15 MS. JACOBSON: I agree with you.  
 16 MR. HABER: Unless you want to  
 17 pick the week of April 2nd and then be  
 18 sure?  
 19 MR. HIGGINS: That's probably  
 20 better anyway because I get concerned  
 21 about the suggestion of January but once  
 22 this one, the DIG one is over, we're  
 23 going to, you know, we're going to have  
 24 to shift gears and have some time to  
 25 prepare papers on the other.

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 2 THE UMPIRE: Again, do you think  
 3 with the three that a week is  
 4 sufficient?  
 5 MS. JACOBSON: I believe so.  
 6 THE UMPIRE: So we could reserve  
 7 off -- if that was okay with you,  
 8 Mr. Higgins, also, the week of 26th of  
 9 March '07?  
 10 MR. HIGGINS: Should be okay.  
 11 THE UMPIRE: Is there anything  
 12 strange about that --  
 13 MR. HABER: 26th is a Monday.  
 14 THE UMPIRE: -- apart from it  
 15 being, the 29th being Mr. Haber's next  
 16 wedding anniversary after tomorrow?  
 17 MS. JACOBSON: We were attempting  
 18 to figure out which week it was Good  
 19 Friday and I can't -- according to my  
 20 list it's wrong. It must be the 23rd.  
 21 THE UMPIRE: The 23rd is Good  
 22 Friday?  
 23 MS. JACOBSON: I was just trying  
 24 to figure it out but apparently the  
 25 schedule that I have of holidays has to

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 2 THE UMPIRE: I actually have no  
 3 problem if Mr. Dielmann doesn't with  
 4 either of those.  
 5 MR. DIELMANN: No.  
 6 THE UMPIRE: And I don't think  
 7 it's going to make that much difference.  
 8 MS. JACOBSON: If my notes are  
 9 correct, Passover may be the following  
 10 week, which is April 2nd, so we would  
 11 want to do it the 26th.  
 12 THE UMPIRE: Okay. Did you hear  
 13 that, Mr. Higgins?  
 14 MS. de LACROIX: I'm trying to  
 15 look at his journal and it seems that  
 16 he's going to a seminar in April, but I  
 17 can't see anything -- I'm sorry.  
 18 THE UMPIRE: That's okay.  
 19 Let's put in the week of the 26th  
 20 now and if it transpires that it's a big  
 21 issue either for Easter or Passover,  
 22 we'll revisit it.  
 23 MR. HABER: So we're at the 26th?  
 24 THE UMPIRE: 26th.  
 25 MR. HABER: Okay, done.

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 2 MR. DIELMANN: Yeah.  
 3 MR. HIGGINS: So the week of the  
 4 2nd, April?  
 5 THE UMPIRE: No, the 26th, there's  
 6 a question probably of Passover in that  
 7 week.  
 8 MR. LEWNER: Passover is the first  
 9 two days, April 2nd and April 3rd of  
 10 that year.  
 11 MS. JACOBSON: We're better off in  
 12 the March dates it appears.  
 13 THE UMPIRE: Okay, back to the  
 14 agenda, I think we're down -- could we  
 15 take it that the parties would like  
 16 similar procedural issues to that we  
 17 discussed and agreed on in the other  
 18 matter?  
 19 MR. HIGGINS: Yes.  
 20 MS. JACOBSON: Yes.  
 21 THE UMPIRE: And ex parte  
 22 communication in the same way, I think  
 23 we said at the filing of the initial  
 24 prehearing briefs?  
 25 MS. JACOBSON: Yes.

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 2 wasn't on the agenda here. If  
 3 necessary, we could revisit that one  
 4 officially but if unofficially if we  
 5 come to the same conclusion here, I  
 6 think it will be much more efficient.  
 7 MS. JACOBSON: We would request a  
 8 reasoned award.  
 9 MR. HIGGINS: What was that, I'm  
 10 sorry?  
 11 MS. JACOBSON: We request a  
 12 reasoned award.  
 13 MR. HIGGINS: We agree.  
 14 THE UMPIRE: Okay. I don't think  
 15 this particular panel is afraid of  
 16 writing written awards.  
 17 So if there's no other matters  
 18 before this particular organizational  
 19 meeting panel, we'd like to adjourn it.  
 20 Do you have any other matters?  
 21 MS. JACOBSON: I don't believe so.  
 22 MR. HIGGINS: We don't.  
 23 THE UMPIRE: So we're going --  
 24 we'll adjourn the organizational meeting  
 25 and take a 10-, 15-minute break?

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 2 MR. HIGGINS: Yes.  
 3 THE UMPIRE: Dates and locations  
 4 we've done.  
 5 MS. JACOBSON: Well, we'll offer  
 6 to hold -- I don't think we discussed  
 7 location but we'll offer our --  
 8 MR. HIGGINS: We can discuss that  
 9 much later. I prefer to avoid hotel  
 10 expenses and all the rest of that.  
 11 MS. JACOBSON: That's why we're  
 12 offering.  
 13 THE UMPIRE: The panel will not  
 14 insist on being in a hotel if the  
 15 parties can agree on a location.  
 16 MS. JACOBSON: Okay.  
 17 THE UMPIRE: And, again, I think  
 18 we're all agreed in New York --  
 19 MR. HIGGINS: Yes.  
 20 THE UMPIRE: -- as before.  
 21 Please correct my memory if it's  
 22 incorrect, but I don't think we actually  
 23 discussed the form of award, whether you  
 24 want a reasoned award or not in the  
 25 other matter, and I raise it now, it

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 2 MR. HABER: 10 is fine.  
 3 THE UMPIRE: 10 is fine.  
 4 (Time noted: 11:12 a.m.)  
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CERTIFICATE

I, ANDREW WALKER, a Registered Professional Reporter and Notary Public, do hereby certify:

I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
ANDREW WALKER, RPR